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SUBJECT: Netherlands: Corporate Governance Issues High on Agenda

1. Summary: Dutch officials told the Ambassador that Sarbanes-Oxley implementation is still a matter of great concern to the Dutch financial community. They acknowledge that U.S. regulators have some flexibility in implementing the law's provisions but fear European voices will not find a receptive audience. Given the prominence of Dutch multinationals in transatlantic trade investment and the great many Dutch officials with prominent financial positions in the EU, we believe U.S. officials charged with transatlantic corporate governance issues would find it worthwhile to add The Hague to their itineraries. Meanwhile, changes to Dutch corporate governance structures should increase shareholder and supervisory board influence at the expense of managing boards. End Summary

TRANSATLANTIC CONCERNS

2. As the government and parliament get back to work after the end of summer holidays, corporate governance issues -- both local and transatlantic -- have assumed new prominence on the Dutch economic policy agenda. Finance Minister Zalm has been briefed on the major issues by both his staff and senior officials of major Dutch companies, such as the Dutch Chairmen of the four major international accounting firms. Treasurer General van Dijkhuizen told the Ambassador that U.S. implementation of Sarbanes Oxley continues to be of major concern particularly because of the administrative burden placed on Dutch auditing companies by its registration requirements adopted by the Public Company Auditing Oversight Board. Van Dijkhuizen acknowledged that the law provided the SEC with considerable discretion as far as implementation but thought that the political climate in Congress was unlikely to allow the SEC much flexibility. He said that Dutch firms did not believe they could effectively lobby the SEC or Congress regarding Sarbanes Oxley implementation having received the impression that their voices, no matter how insistently raised, would not be listened to. In a separate meeting with the Ambassador, the Dutch chairmen of the four international accounting firms, said that Sarbanes Oxley would make companies less likely to list on a U.S. stock exchange and identified the main problems as 1) the law raises costs to European companies while providing no real benefits and 2) it places a burdensome fiduciary responsibility directly on corporate heads.

DOMESTIC ISSUES

3. Meanwhile, a Dutch blue ribbon committee headed by former Unilever Chairman Morris Tabaksblat has issued an extensive list of far reaching recommendations for reform of Dutch corporate structures and behavior (the entire text of the recommendations can be found in English at <http://www.commissiecorporategovernance.nl/Conceptcode>). The recommendations strengthen the position of shareholders and the supervisory board at the expense of the management board. They contain limitations on the remuneration of management board members, limit the number of executive board memberships that can be held by an individual, and require the supervisory boards to be more intimate with the details of company management. The Dutch establishment has reacted negatively on two levels: 1) supervisory board members fear adoption of the recommendations would break up the cushy old boys network that has dominated Dutch corporate life and 2) many management board members dislike the proposed remuneration limits. Finance Minister Zalm has said, however, that if Dutch companies do not adopt the bulk of the recommendations voluntarily (through a "comply or explain" system) he will push for their legislative enactment.

RECOMMENDATION

4. We believe that it would be worthwhile for senior U.S. officials involved in transatlantic financial officials call on relevant Dutch officials when they come to Europe. The Netherlands is preparing for their 2004 (latter half) EU

presidency, and Dutch officials hold several influential European and international financial positions, for example:

-- Treasurer General van Dijkhuizen is Chairman of the ECOFIN's Financial Services Committee;

-- Financial Markets Authority Chairman Docters van Leeuwen is also Chairman of the European Securities Regulators;

-- Central Bank Chairman Wellink is also Chairman of the Bank for International Settlements;

-- Rotterdam lawyer Jaap Winter is Chairman of an Experts Group advising the European Union on Corporate Governance;

15. Engagement between senior Dutch and U.S. officials at this juncture would seem particularly important because the Dutchmen with whom we have been interacting are either downplaying or unaware of USG initiatives to increase dialogue and address European concerns with Sarbanes-Oxley. Discussing issues with Dutch officials directly would likely bring real benefits.
Sobel